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SUPERIOR COURT ✓  
2010 SEP 23 PM 4:32  
JEANNE HICKS, CLERK  
BY: V. Adams

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Cause No. P1300CR20081339

Plaintiff,

Division PTB

v.

STATE'S RESPONSE TO DEFENDANT'S  
MOTION RE: UNDISCLOSED CHRIS  
KOTTKE INTERVIEW

STEVEN CARROLL DEMOCKER,

Defendant.

FILED UNDER SEAL

The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion Re: Undisclosed Chris Kottke Interview. The State of Arizona's Response is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Relevant Procedural History:

On July 12, 2010, the State filed its 71<sup>st</sup> Supplemental Disclosure in which it disclosed several witnesses related to the receipt of the proceeds from the Hartford Insurance Policy on Carol Kennedy. Included in the witnesses was attorney Chris Kottke, Personal Representative for the Estate of Carol Kennedy. The disclosure statement indicated Mr. Kottke would testify regarding the probate of the estate. Defendant immediately

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DIVISION 6

1 the admission of the information in the disclosure statement and specifically argued the  
2 probate file was not relevant to any issue in this case. *Response to State's Late Disclosure in*  
3 *Violation of Arizona Rule of Criminal Procedure 15.6 (71<sup>st</sup> Supplemental Disclosure Dated*  
4 *July 12, 2010)*, 7/14/10 at 5.

5 On August 13, 2010, this Court issued a ruling regarding the evidence the State would  
6 be permitted to present to the jury relating to the distribution of the insurance proceeds.  
7 Pursuant to this Court's order the following limitations were imposed:  
8

9 (1) Evidence as to the ultimate disposition of the insurance proceeds  
10 would be admissible. Acknowledging that the defense has objected to the  
11 admission of all insurance or disclaimer evidence that arguably would be  
12 negative to the Defendant's position, the Court also notes that the conditional  
13 stipulation suggested by the defense includes such evidence. However, the  
14 Court also rules that the evidence of the amount involved is admissible.

15 (2) Subject to the limitations stated in part (3) of this ruling, evidence  
16 relating to a witness's reason for his or her involvement in the transfer of the  
17 insurance funds is admissible.

18 (3) As the Court has previously ruled, any evidence or argument  
19 offered to suggest that the transfer of funds occurred in an unlawful manner,  
20 whether in a criminal or civil sense, is not admissible.

21 *Ruling Re: Evidence*, 8/13/10 at 3.

22 On August 13, 2010, Chris Kottke, through his attorney Tom Kelly, requested a  
23 meeting with County Attorney, Sheila Polk. The County Attorney agreed to the meeting on  
24 condition that it be recorded. The subsequent meeting was held on August 17, 2010 and the  
25 recording of the meeting has been preserved.

26 On August 20, 2010, this Court ruled on Defendant's July 14, 2010 motion as it  
related to the probate file as follows:

The Court has ruled previously concerning the admissibility of  
evidence relating to the Hartford life insurance policies. The information  
contained in the probate file falls within the purview of that prior ruling. This

1 information is precluded, subject to the possible limited exception stated in the  
2 ruling relating to Hartford Insurance information.

3 *Pretrial Under Advisement Ruling on State's Amended Motion to Extend Time for Additional*  
4 *Disclosure on State's 71<sup>st</sup> Supplement Pursuant to Rule 15.6(d), 8/20/10.*

5 **Legal Argument:**

6 **1. The meeting with Mr. Kottke's does not fall under the State's disclosure**  
7 **obligations under Rule 15.1, Ariz. R. Crim. P.**

8 Rule 15.1, Ariz. R. Crim. P., sets forth the disclosure obligations of the State. There is  
9 no provision in the rule requiring the disclosure of a recording of an meeting with an  
10 individual who will not testify at trial and who provided no mitigating or exculpatory  
11 information relating to Defendant.

12 Based on the above procedural history, the State is precluded from presenting  
13 evidence relating to the probate of Carol Kennedy's estate with very limited exceptions.  
14 Accordingly, although Mr. Kottke was once named as a possible trial witness for the State,  
15 there is no intent at this point to call him as a witness at trial. Furthermore, there is no merit  
16 to Defendant's claim that the meeting with Mr. Kottke was held "to gather additional  
17 information with respect to the Hartford Life Insurance issue." The meeting was initiated by  
18 Mr. Kottke, not the State. On the same basis, there is no support for Defendant's claim that  
19 the meeting violated any assurances to Defendant that any investigation into possible  
20 criminal charges relating to the payment of the insurance proceeds would be made by another  
21 agency. Moreover, while Defendant avows to this Court that disclosure of the meeting is  
22 required under *Brady*, there is no basis for this claim.

23 The rule established in *Brady* is that "the state is required to disclose all plainly  
24 exculpatory evidence within its possession and violates due process if it fails to do so,  
25  
26

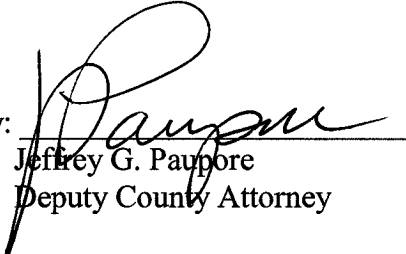
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1 irrespective of its good or bad faith.” *State v. O’Dell*, 202 Ariz. 453, ¶ 10, 46 P.3d 1074, 1078  
2 (App.2002); *see also State v. Youngblood*, 173 Ariz. at 505-06, 844 P.2d at 1555-56. The rule  
3 set forth in *Brady* is codified in Rule 15.1(b)(8), Ariz. R. Crim. P., which requires the state to  
4 disclose all “existing material or information which tends to mitigate or negate the  
5 defendant’s guilt as to the offense charged.”

6  
7 Mr. Kottke sought the opportunity to meet with the State. The meeting did not reveal  
8 any information that would mitigate or negate the defendant’s guilt in this case. Furthermore,  
9 the State has no intention of using any information obtained in the Kottke meeting during the  
10 trial of this case. The content of the meeting has been preserved and it is not encompassed by  
11 Rule 15.1 or *Brady*. Defendant’s motion should be denied without hearing.

12 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> September, 2010.

13  
14 Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY

15  
16 By:   
17 Jeffrey G. Paupore  
18 Deputy County Attorney

19 COPIES of the foregoing delivered this  
20 23<sup>rd</sup> day of September, 2010 to:

21 Honorable Warren Darrow  
22 Division PTB  
23 Yavapai County Superior Court  
(via email)

24 John Sears  
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By: Kathy Durrer